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Proposed Regulation Concepts for Response Actions



*It is DTSC's
mission to protect
public health
and the
environment
from
harmful exposure
to hazardous
substances.*

State of California



California
Environmental
Protection Agency



General Approach:

In these proposed regulations the Department of Toxic Substances Control (DTSC) will establish a single process for the majority of response actions in the state, including those conducted under the state's site mitigation authority (Health and Safety Code, Division 20, Chapter 6.8) and those conducted under the state's corrective action authority (Health and Safety Code, Division 20, Chapter 6.5). The proposed requirements for these cleanups will be consistent with the federal cleanup requirements found in Subpart E of the National Contingency Plan (NCP). This allows DTSC to maintain consistency for cleanups since consistency with these NCP procedures and criteria are required for state and federal Superfund sites and other sites addressed under Chapter 6.8, H&SC. This approach would also ensure that the overseeing agencies (DTSC and the Certified Unified Program Agencies (CUPAs)) could recover costs under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

The proposed requirements will include special circumstances for time-critical removals and an alternative process for lower risk sites. The proposed regulations will also specify the public participation requirements for cleanup and will include the qualification standards for CUPAs seeking authorization to oversee corrective action at CUPA-regulated facilities. Finally, the proposed regulations will clarify when a permit is required for permanent disposal in an Area of Contamination (AOC) and when a groundwater threat warrants groundwater investigation.

DTSC seeks comments regarding these proposals. In particular, DTSC is interested in feedback regarding the use of a single cleanup process for most site mitigation and corrective action response actions and the use of the procedure contained in the NCP for these cleanups. DTSC is particularly interested in specific experiences with this and other cleanup processes.

Time-critical Removals:

A time-critical removal action is a non-emergency removal action with a short planning period before on-site activities must be initiated, typically less than six months. Currently, DTSC requires a removal action workplan for such removals, but would like to allow time-critical removals to occur without a removal action workplan. This proposal is consistent with federal requirements, which allow such removal actions to proceed without an analysis of removal alternatives (engineering evaluation/cost analysis (EE/CA)).

DTSC anticipates requiring a description of the removal activities, including methods to protect the health and safety of workers and the public, and a schedule for implementation. However, a discussion of alternative remedial measures is not expected to be required for these time-critical removals.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.dtsc.ca.gov.

Alternative Process:

DTSC acknowledges the need for an alternate response system at sites with small releases that pose a low potential for risk. To accomplish this, DTSC is proposing an approach that includes different requirements for sites with limited contamination. The conditions of such a situation may include:

- a small areal extent of contamination (well-characterized)
- no groundwater contamination
- single constituent contamination
- no on-site or in situ treatment

The process for such cleanups would require characterization, determination of appropriate cleanup levels (often will be background levels), and selection of an appropriate remedy. The procedure for these steps and the reports required for them will be determined by the overseeing agency on a case-by-case basis.

DTSC seeks comments regarding this proposal and is interested, particularly, in the effects of cumulative impacts and procedures for sites at which initial characterization does not adequately determine the type and extent of contamination. DTSC is also interested in the types of cleanup activities that should be included in this category and processes applicable to these activities. Finally, DTSC is interested in examples of a cleanup process appropriate to these situations.

CUPA Qualifications:

The proposed regulations will also contain the qualifications for Certified Unified Program Agencies (CUPAs) that intend to oversee corrective action cleanup activities. The provisions will specify the qualification standards that CUPAs must meet to demonstrate they have the ability and expertise needed for corrective action. These standards will include details regarding the type of staff training, education and experience CUPAs will need to perform this work, and the procedures DTSC will use to verify and audit these qualifications and oversight activities.

In these proposed requirements, DTSC is currently exploring a tiered system whereby sites will be classified according to their extent and complexity. The associated CUPA qualification requirements would also be tiered and tailored to the types of cleanups the CUPA intends to manage. For example, the standards required for a CUPA that only intends to oversee Phase I assessments will be different from the standards for a CUPA that intends to seek approval to oversee complex cleanups that require a risk assessment.

DTSC seeks comment on the implementation of such a tiered system. In particular, DTSC is interested in procedures for transferring between tiers if additional information about a site ultimately requires a transition. DTSC is also interested in examples of the types of corrective action cleanups CUPAs anticipate overseeing.

Public Participation Requirements:

DTSC recognizes the value of early and meaningful public participation activities for response actions. In DTSC's experience, many concerns can be addressed when essential information is shared between the overseeing agency and the public early in the cleanup process, and public input is considered in the decision-making process. To accomplish this, DTSC is proposing to implement the public participation procedures described in Chapter 6.8 of the Health and Safety Code for most sites. These procedures include, but are not limited to, the development of a public participation plan tailored to the public interest in a given site, fact sheets at numerous points in the cleanup process to convey important information, periodic comment periods and public meetings at decision-making points in the process and the development of community advisory groups to provide technical assistance within local communities.

For the time-critical removals and other site exceptions discussed earlier, DTSC is proposing to implement the public participation program outlined in the federal NCP requirements. These procedures are very similar to those in H&SC's Chapter 6.8, but include fewer required fact sheets, public comment periods and meetings (any additional outreach measures may be implemented, if needed).

DTSC would like comments regarding the level of public participation typically needed for cleanups.

Permanent Disposal in an AOC:

Where applicable, when permanent disposal occurs in an area of contamination (AOC) DTSC will require authorization to ensure that the activities are protective. The proposed regulations will define the type of authorization that will be required and when.

Groundwater Investigation:

DTSC is proposing to include requirements for investigation when there is a threat to groundwater. DTSC is interested in comments related to such requirements.